

1 Amend 2 Cal. Code Regs. Section 18316.5 to read:

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3 **18316.5. Application of Government Code Section 83116.5**  
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5 (a) The Commission will not apply Government Code Section 83116.5 to find a  
6 violation of this title by a person who provides incorrect advice interpreting any provision of this  
7 title which causes the advisee to violate this title under any of the following circumstances:

8 (1) Government Employees or Contractors. If the person is an employee of or under  
9 contract to a state or local government agency and is giving advice interpreting the provisions of  
10 this title as part of the person's government contract or employment.

11 (2) Private Sector Filers. If the person is not exempted by subdivision (1), and the  
12 person has filing or reporting obligations under this title, if either of the following applies:

13 (A) There is no direct relationship between the advice given and the duties or activities  
14 of the position for which the person has filing or reporting obligations; or the client being  
15 advised is not the client for whom the filing occurs; or

16 (B) If the person's conduct in giving the advice was not grossly negligent. "Grossly  
17 negligent" means that the person giving an incorrect interpretation failed both to diligently  
18 research the subject related to the advice given and to use his or her informed judgment in  
19 providing the advice, and the advice was clearly erroneous.

20 A person will be deemed to have "diligently researched" the subject related to the advice  
21 given if he or she has reviewed the applicable provisions of this title and the regulations,  
22 opinions, and manuals of the Commission, including the compilation of such documents  
23 contained in the California Continuing Education of the Bar publication, titled "California Fair  
24 Political Practices Commission," on the agency website at [www.fppc.ca.gov](http://www.fppc.ca.gov), as well as any  
25 applicable reported appellate court decisions and the California Code of Regulations.

1           (3) Attorneys in Private Capacity. If the person is not a government employee or  
2 contractor, as defined in subdivision (a)(1), or a private sector filer, as defined in subdivision  
3 (a)(2), and the person is an active member of the State Bar of California whose only service in  
4 connection with the violation was providing legal advice and who was not also engaged in the  
5 planning, organizing, or directing of an activity from which the violation occurred. "Legal  
6 advice" means the rendering of oral or written advice including the preparation of documents and  
7 reports incidental to the rendering of such advice, but shall not include the preparation of any  
8 report or document required to be filed under this title by the person providing the advice.

9           (b) This regulation is not applicable where a person renders advice which is intended to  
10 result in a violation of this title. Furthermore, nothing in this regulation shall be construed to  
11 exempt a person from liability for a violation of any other provision of this title.

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13 Note: Authority: Section 83112, Gov. Code

14 Reference: Sections 83116 and 83116.5, Gov. Code